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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,210	11/26/2003	Lisa Semeniuk	50709-4	1209
23971	7590	06/02/2006	EXAMINER	
BENNETT JONES C/O MS ROSEANN CALDWELL 4500 BANKERS HALL EAST 855 - 2ND STREET, SW CALGARY, AB T2P 4K7 CANADA			PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3743	
DATE MAILED: 06/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/707,210

Applicant(s)

SEMENIUK, LISA

Examiner

Nihir Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03.24.2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. The declaration under 35 CFR sec. 1.132 filed on March 17th, 2006 is insufficient to overcome the rejection of claim 1 through 28 based rejections under 35 U.S.C. 103(a) as set forth in the office action because the pictures fails to show clear views of ear abrasions. In view of the foregoing, when all of the evidence (long felt need, skepticism of expert, commercial success, etc...) is considered, the totality of the rebuttal evidence of nonobviousness fails to out weight the evidence of obviousness.
2. The applicant also argues that Byram does not teach the use of an oxygen mask. The examiner disagrees. On page 3 of the declaration 1.132 filed on March 17th, 2006 the applicant clearly states that a respirator may be adapted to accommodate an oxygen source, therefore it would have been obvious to use a respirator as taught in Byram to accommodate an oxygen source in order to provide oxygen to the patient.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims **1 through 6, 10 through 15, 19 through 24 and 28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Byram (US 6,591,837) in view of Nelson et al. (US 4,960,121). **Referring to claim 1**, Byram discloses the applicant's invention as claimed with the exception of disclosing an adaptor for receiving oxygen supply tubing. Nelson discloses an

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apparatus that does disclose an adaptor for receiving oxygen supply tubing (see column 2 lines 45-50). Therefore it would have been obvious to modify Byram's invention by providing an adaptor that is capable of receiving oxygen tubing or a suitable filter assembly as taught by Nelson in order to provide respiratory gas (oxygen) or clean air to the user.

5. Claims 7, 16, 25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byram (US 6,591,837) in view of Darrow (US 1,323,217). Referring to claims 7, 16, 25 and 29, Byram discloses the applicant's invention as claimed with the exception of disclosing a transverse element (transverse crown strap) that is connected at one end to the upper crown strap and connected at the other end to the lower crown strap. Darrow discloses an apparatus that does disclose a transverse element (transverse crown strap) that is connected at one end to the upper crown strap and connected at the other end to the lower crown strap (see figure 1). Therefore it would have been obvious to modify Byram's invention by providing a transverse element (transverse crown strap) that is connected at one end to the upper crown strap and connected at the other end to the lower crown strap as taught by Darrow in order to prevent the mask from loosening if the patient decided to change head positioning.

6. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Byram (US 6,591,837) in view of Norfleet (US 6,418,929). Referring to claim 30, Byram discloses the applicant's invention as claimed with the exception of disclosing that the upper and lower crown straps comprise elastic material. Norfleet discloses an apparatus that does disclose that the upper and lower crown straps comprise elastic material (see column 4 lines 49-53 and figure 3). Therefore it would have been obvious to modify Byram's invention by providing upper and lower crown straps comprise elastic material as taught by Norfleet in order to provide the user

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with comfortable fitting and so that the user can rotate their head in any desired position without applying force.

7. Claims 8, 9, 17, 18, 26, 27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byram (US 6,591,837) in view of Darrow (US 1,323,217) as applied to claims 7, 16, 25 and 29 above, and further in view of Cruickshank (Patent GB 2 212 725 A). **Referring to claims 8, 9, 17, 18, 26, 27 and 31**, Byram and Darrow discloses the applicant's invention as claimed with the exception of a transverse crown strap that comprises resilient (elastic) material. Cruickshank discloses an apparatus that does disclose a transverse crown strap that comprises resilient (elastic) material (**see figure 1**). Therefore it would have been obvious to modify Byram and Darrow inventions by providing a transverse crown strap that comprises resilient (elastic) material as taught by Cruickshank in order to make it easier to put on and remove the mask.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nihir Patel
Art Unit 3743



Henry Bennett
Supervisory Patent Examiner
Group 3700